IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 634 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAMJIBHAI GHADIYABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 634 of 1995
MR KR RAVAL for Petitioner No. 1
A.J. DESAI, APP for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.P.BUCH

Date of decision: 27/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This Jail Appeal under Section 374 (2) of the Cr. P.C. is directed against the judgment of conviction recorded in Sessions Case No. 157 of 1994 by Learned Sessions Judge, Surat, whereby the appellant-convict has been found guilty for the offence punishable under Section 302 I.P. Code and sentenced to suffer imprisonment for life.

2. Facts leading to filing of the present appeal shortly stated are that, as per the prosecution case Ramji and his wife were staying at village Mandalpada; that Ramji entertained a doubt that his wife Jasuben was having illicit relations with one Mangubhai Hirabhai. In connection with the said doubt, on 14-3-1994 at about 12.00 noon altercations took place between Ramji and his wife Jasuben. At that time Ramji hurled stone at Jasuben which hit Jasuben on her face; that Ramji also gave several stick blows to Jasuben, with the result Jasuben sustained multiple injuries on mouth, chest, buttocks, rear portion of thigh. Over & above the said injuries accused also caused injury by thrusting wooden handle of the axe in the private part i.e. vagina of Jasuben, which caused serious injuries in uterus, bladder, paratorium. On receiving injuries Jasuben raised cries which were heard by Tulsibhai Karsanbhai, who has been residing in the neighborhood and upon hearing cries of Jasuben, Tulsibhai rushed to the place of occurrence to rescue Jasuben but having found the condition of Jasuben serious, he immediately went to the place of Samabhai Bhikabhai and informed him about the incident and both of them came to the place of occurrence. In the meantime Police Patel of the village had also come to the place of occurrence and other people had also collected there. They all saw Jasuben lying dead and also saw lying there wooden handle of the axe; that Ramji was also standing at the place of occurrence, who was apprehended by the persons who had gathered. Thereafter Tulsibhai took the accused to Jankhvav and then to Mangrol police station and gave the complaint exhibit-28 about the incident.

The offence was then registered and after investigation chargesheet was filed against the accused and vide exhibit-3 charge came to be framed against the accused for having allegedly committed murder of his wife Jasuben. The accused denied the charge levelled against him and claimed to be tried, whereupon the prosecution in order to bring the guilt home to the accused adduced oral as well as documentary evidence. Thereafter, further statement of the accused was recorded under Section 313 of the Cr.P.C. and circumstances incriminating against

accused emerging from the prosecution evidence were put to the accused. The defence is that of denial. Learned trial Judge appreciating the evidence on record and the circumstances emerging, found the accused guilty for the offence under Section 302 I.P. Code for having committed murder of his wife Jasuben and sentenced him to suffer imprisonment for life. It is this finding of guilt and the imposition of sentence for imprisonment of life which have been assailed in the present appeal by the appellant convict.

3. We have heard the arguments advanced by the learned advocate for the appellant-convict and by the learned APP for the State.

It is submitted by Mr. K.R. Raval, learned advocate, who has been appointed by the High Court to represent the appellant convict in this appeal submitted that, the conduct of the appellant that he remained at the place of occurrence even after the incident would be suggestive of his innocence, otherwise normally a person, who is guilty, would flee from the place of incident. It is further submitted by Mr. Raval that the witness Tulsibhai rushed to rescue Jasuben upon hearing her cries and when he reached the place of occurrence Jasuben had fallen down sustaining injuries which would suggest that, P.W. 1 Tulsibhai did not witness the occurrence and he reached the place of occurrence only after the deceased had received injuries and had fallen down, and that, there is no other evidence to connect the convict with the guilt; that, the convict has been grazing the cattle of other persons and that the cattle used to enter the fields of other persons and that led to animosity against the convict and that the convict has been falsely implicated.

4. We have perused the trial Court record.

As far as the death of deceased Jasuben is concerned the same being homicidal death has been sufficiently suggested from the evidence of P.W. No. 2 Dr. Ranjitbhai Savjibhai Raval, who has performed postmortem on the deadbody of Jasuben and the injuries noted in postmortem notes exhibit-13 and the cause of death mentioned therein. P.W. No.2 in his evidence has narrated the external injuries on the deadbody noticed in course of the postmortem carried out by him, and has also narrated internal injuries found during postmortem examination and noted in the postmortem note. It has been clearly deposed by P.W. 2 that the injuries noted on the upper portion of vagina and internal portion of

uterus along with the injuries on rear part of bladder and injuries found in the paratorium cavity dark blue injury and red blue serum found in the cavity were corresponding with each other. It is further deposed that these injuries would be possible if a hard & blunt substance is forcefully thrust in the vagina of the deceased. That the muddamal article No.1 - wooden handle of axe if forcibly thrust in the vagina such injuries would be possible. The cause of death is multiple injuries leading to the shock. It has been further deposed that the injury caused in the vagina together with corresponding internal injuries noted in the postmortem notes would be sufficient in the ordinary course of nature to cause death and that other injuries cumulatively would also be able to cause death. It is also stated that all the injuries were antemortem and the injuries other than the injury in the vagina can be caused by stick blows, whereas external injury No.1 can be caused by stone. Thus, it would be seen that the evidence of P.W. No.2 and the injuries found and cause of death deposed by P.W. No.2 and noted in the postmortem note exhibit-13 clearly establish that, deceased Jasuben died a homicidal death.

5. As far as the occurrence is concerned, prosecution has examined P.W-1 Tulsibhai Karsanbhai at exhibit-11. It has been deposed by the witness that accused Ramjibhai is known to him as he is staying near his house; that, Jasuben happened to be the wife of Ramjibhai; that the incident took place on 14-3-1994 and he had witnessed the incident; that, Ramjibhai hurled stone at his wife which hit Jasuben and she fell down. Thereafter accused Ramjibhai gave stick blows on the chest of Jasuben. Seeing this, he went to Samabhai and informed him about the incident. Thereafter, both of them came to the place of occurrence and found Jasuben having died and all of them apprehended Ramjibhai and he was taken to Mangrol police station where the complaint exhibit-28 was lodged. It is also stated by him that, when he came to the place of occurrence along with Samabhai, he had seen wooden handle of axe in the private part of Jasuben.

It is suggested from the evidence of P.W. No.1 that upon hearing the cries of Jasuben, when he reached at the place of occurrence to rescue her, he saw that the accused was beating Jasuben and Jasuben had fallen down and when he returned to the place of occurrence with Samabhai after informing him about the incident, the accused was present at the place of occurrence and the wooden handle of axe was also found at the place of

occurrence.

6. As far as the occurrence is concerned, P.W. No. 1 has categorically stated of he having seen the incident of beating Jasuben by Ramjibhai with stick, and after he returned to the place of incident with Samabhai, he had seen Jasuben having received injury in her private part and the wooden handle of axe with blood stains was found at the place of incident, and thereafter accused was apprehended from the place of incident, and taken to Mangrol police station and the complaint was given. As far as the evidence of witness Tulsibhai, P.W. No. 1 is concerned, it is not the say of the accused that he had any enmity with Tulsibhai and so Tulsibhai has falsely implicated him in the offence.

It has been suggested to this witness during cross examination that, accused takes cattle of other persons for grazing and he would return in the evening. The suggestion that on the date of incident accused had gone with the cattle of the village people for grazing has been denied by the witness. Suggestion to the effect that accused returned after grazing cattle in the afternoon has also been denied. It is also denied that witness was not present at noon time at the place of incident. It may be appreciated that, even according to the defence, accused has been grazing cattle of other persons and not his own cattle, therefore there is no question of any enmity. Because, if he was not careful as regards grazing of the cattle and if any damage is caused in the fields of others, then he would not be continued with the work of grazing cattle. As far as the accused is concerned, he had nothing personal as regards grazing of cattle and also damage, if any, to the crop in the fields of other persons. It is also not suggested form the record or any suggestion to P.W. No. 3 or P.W. No. 4 that any complaint was filed against the accused for cattle trespass. Under the circumstances, we do not find any substance in the suggestion of any enmity with the accused on the score of cattle grazing. As far as evidence of P.W. No.1 is concerned, there is no reason not to believe the witness for he having seen the occurrence and having reached the place of occurrence on hearing cries of deceased Jasuben and having seen the occurrence, namely, accused inflicting blows with stick on Jasuben.

7. As far as P.W. 4 Samabhai Bhikabhai Chowdhri is concerned, he has stated in his evidence that on 14-3-1994 at about 1.00' clock when he was in his house, Tulsibhai came to him and told him that Ramjibhai

Ghadiyabhai is beating his wife and she is in serious condition, whereupon the witness along with Tulsibhai came to the house of Ramjibhai and found wife of Ramjibhai lying dead. He also saw injuries on mouth and there were blood stains and also injury on chest, buttocks etc. That, there were injuries in the private part and there were blood stains also and at a distance of about 3 ft. one wooden handle with blood stains was seen. Thereafter the witness and other persons apprehended Ramjibhai who was also present there. Nothing substantial has been brought out from the cross examination of this witness so as to make him unreliable and discard the testimony of this witness. P.W. No.4 came to the place of occurrence on the say of Tulsibhai, P.W. No.1 and has narrated in his evidence what has seen at the place of occurrence.

8. P.W No.3 Vestabhai Dediyabhai Vasava, exhibit-14 has stated in his evidence that on 14-3-1994 at about 1.00' clock in the noon he was in his house. At that time Samabhai and Tulsibhai came to his house and told him that Ramjibhai has murdered his wife, whereupon the witness along with Tulsibhai and Samabhai came to be place of Ramjibhai, where Ramjibhai was present. This witness also saw Jasuben in a dead condition and also found injuries in the mouth of Jasuben with bleeding from mouth; that there were injuries on buttocks and it appeared that her private part was also injured; that, nearby one piece of wood was lying. Thereafter police was informed and the accused was apprehended from the place of incident and taken to Mangrol police station. This witness does not say that he witnessed the occurrence. All what he states is that he saw wife of Ramjibhai in injured condition with injuries on mouth, buttocks, bleeding from the mouth and injury also appeared to have been caused in the private part and the wood lying nearby. As far as this witness is concerned his evidence does not throw light on actual occurrence.

9. As seen above, P.W. No.1 is the only eye witness to the occurrence and he has in clear terms stated about he having rushed to the place of occurrence upon hearing the cries of Jasuben and saw the accused giving beatings to his wife with stick, and when he returned with Samabhai, he saw the wooden handle lying in the private part of deceased Jasuben and accused Ramjibhai was also present at the place of occurrence. This witness says that he saw the accused giving beatings to Jasuben and till this witness returned with Samabhai and accused was present and apprehended by P.W No.1 and other persons. There is nothing abnormal or unnatural in the evidence of

P.W No.1 so as to discard his testimony and appreciating the evidence of P.W. No.1 as a whole, same sounds reliable and trustworthy. As far as beatings given by accused is concerned, P.W. No. 1 stands corroborated by P.W. No.3 & 4 and the medical evidence P.W. No.2 and post mortem notes exhibit-13.

10. It may be appreciated that, accused Ramjibahi and his wife as disclosed from evidence of record were staying in the house. In other words it is not suggested from the record that there was any other inmate in the house. It is not possible that any outsider or some third person would come to the place of occurrence in broad day light and cause injuries to Jasuben. It may also be appreciated that as per evidence of P.W. No.1, at about 12.00'O' Clock on the day of incident there were some altercations between the husband and wife, i.e. Jasuben and the accused and upon hearing the cries of Jasuben P.W. No.1 rushed to the place of occurrence to rescue Jasuben. Thus there was no one else at the place of occurrence except the accused and deceased Jasuben. When P.W. No.1 left the place of occurrence to inform P.W. No.4 and 3, Jasuben was in a serious condition on account of injuries inflicted on her by Ramjibhai which is disclosed from the evidence of P.W. No.1. P.W. No. 1 immediately informs P.W. No.4 and 3 about Ramjibhai having inflicted serious injuries on Jasuben and P.W. No. 3 & 4 come to the place of occurrence immediately. At that time Jasuben was found lying in injured state and Ramjibhai standing at the place of incident, and that wooden handle of axe muddamal article No. 1 with blood stains and pubic hair on it was lying nearby at the place of occurrence. The accused Ramjibhai was apprehended from the place of occurrence itself. It is also suggested from the evidence that there were blood stains at the place of occurrence with injuries on various parts of the body of deceased Jasuben. It is suggested that muddamal article No. 1 wooden handle with blood stains and pubic hair was recovered from the place of occurrence. Ofcourse, evidence on record does not disclose blood group of the blood stains found on muddamal article No.1 as the blood group could not be ascertained, but at the same time, it was found that, the same was human blood. It may also be appreciated that the conduct of the accused is far from being natural or normal in as much as, if he was not involved in the incident, then, the normal person would react in a different way; meaning thereby that he would try to rescue his wife or would raise cries for help from neighborhood, so that wife can be saved from injuries being inflicted by some third person. Instead the

accused was not only seen beating his wife by P.W. No.1 with stick but was found standing at the place of occurrence like a statue when P.W. No.1, 3 & 4 and other persons came to the place of occurrence and apprehended him. This conduct of the accused cannot be regarded to be that of a normal/innocent person. It is true that different persons behave differently in a given situation but, normally, the conduct of a person not involved in the crime would be otherwise than what is suggested by the behaviour of the accused from the record.

11. The wooden handle muddamal article has been recovered from the place of occurrence. As seen above, according to the prosecution version, Ramjibhai suspected fidelity of his wife Jasuben about alleging illicit relations with one Mangubhai. It may be appreciated that, as per P.W. No.2, postmortem notes exhibit-13 and also suggested from inquest that the injuries have been caused not only on chest, mouth, buttocks etc. but in a most brutal way injuries have been inflicted in the private part of deceased Jasuben by forcibly thrusting wooden handle ; and as per P.W. No.3 the shock on account of injury received on private part culminated into death of deceased Jasuben coupled with other injuries collectively leading to shock which can also cause the death as per the medical evidence. The evidence also suggest that muddamal wooden handle did not only have human blood marks but also pubic heir. Thus taking the evidence emerging from the record, it is clearly established that it is Ramjibhai and Ramjibhai alone who has inflicted injuries on the person of Jasuben as suggested from medical evidence discussed above, and there is no possibility of any third person present at the place of occurrence when Jasuben received injuries, and the evidence of P.W. No.1 corroborated by . 2, 3, 4 and exhibit 13 in this regard inspire confidence and hence reliable and trustworthy. The complicity of the appellant Ramjibhai with the crime is established beyond all reasonable doubt ; and the conviction has been justifiably based by the trial Court on the evidence of P.W. No.1 and evidence of P.W. No.2 along with postmortem Note exhibit-13.

12. We do not find any reason to arrive at a contrary conclusion on appreciation of evidence and we are of the view that the conviction recorded by the trial Court deserves to be confirmed and the appeal being devoid of merits liable to be dismissed.

In the result the appeal fails and is accordingly dismissed.

Dt: 27-8-2002 (N.G. Nandi, J)

(D.P. Buch, J)

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